



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

July 22, 2019
SPR19/1395

William Doyle, Esq.
Massachusetts Department of Transportation
10 Park Plaza, Suite 3910
Boston, MA 02116

Dear Attorney Doyle:

I have received your petition on behalf of the Massachusetts Department of Transportation (Department) requesting permission to charge for time spent segregating or redacting responsive records under G. L. c. 66, § 10(d)(iv). As required by law, the Department furnished a copy of their petition to the requestor. G. L. c. 66, § 10(c). In this matter, on July 3, 2019 Molly Redden requested:

- 1) A list, preferably in a table, of driver license applications submitted in the state of Massachusetts between Jan 1, 2014 to present by people born in Puerto Rico. This should include the date the application was submitted, the person's current residence, their birthplace (Puerto Rico) and if the application was approved, pending or denied and the reason why it is pending or denied;
- 2) A description of the process and/or policies used to verify the eligibility of people in Puerto Rico for a driver's license in Massachusetts;
- 3) Copies of all materials and/or instructions used to verify the citizenship of people born in Puerto Rico.

Petitions to Assess Fees

The Supervisor of Records (Supervisor) may approve a petition from an agency to charge for time spent segregating or redacting or to charge in excess of \$25 per hour, if the Supervisor determines that 1) the request is for a commercial purpose or 2) the fee represents an actual and good faith representation by the agency to comply with the request. G. L. c. 66, § 10(d)(iv).

In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve an agency's petition to allow the agency to charge for time spent segregating or redacting records or to charge in excess of \$25 an hour for the provision of public records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv). It is my determination that the request is not for a commercial purpose. The second prong of the test is whether the fee represents an actual and good faith representation by the agency to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation or fee in excess of \$25 per hour; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. Id.

Fee Estimates

An agency may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Agencies may not assess a fee for the first four hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested. G. L. c. 66, § 10(d)(ii). Where appropriate, agencies may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce a record requested, but the fee shall not be more than \$25 per hour. Id. A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(ii); 950 C.M.R. 32.06(4).

Current Petition

In its petition to this office dated July 15, 2019 the Department writes, “[w]e are currently conducting a search for responsive records. However, due to the substance of the request, we believe that many, if not all, of the responsive records will require redaction of records that are ‘specifically or by necessary implication exempted from disclosure by statute’ pursuant to Massachusetts General Laws, Chapter 4, Section 7(26)(a) containing personal information under Section 7(26)(c). Therefore, MassDOT seeks the Supervisor’s permission to charge the requester for time spent segregating and redacting records that are responsive to the request.”

The Department notes, “[w]ith regard to records which must be exempted from disclosure by statute, the Drivers Privacy Protection Act (18 U.S. Code § 2721) states, in part, ‘[a] State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity...personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in

connection with a motor vehicle record...' Personal information includes information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information."

In addition, the Department cites Exemption (c) claiming, "[t]he Massachusetts Public Records Law allows redaction under Exemption (c) for records likely to contain 'personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.'"

The July 15th petition posits that, "MassDOT should be allowed to charge for this work. Charging a fee in this matter is necessary because this request cannot be prudently completed without redacting information under these applicable exemptions. The fee is reasonable as it relates to a specific redaction, and the fee is not designed to limit, deter or prevent access to public records; rather, it is meant to protect MassDOT from inadvertently revealing confidential personal information. Releasing the requested records without redaction would impede MassDOT's security initiatives and obligations under Federal law, as well as jeopardize the privacy of the Commonwealth's residents and visitors."

Conclusion

In light of the Department's petition, I find the Department has met its burden to explain how, given the nature of the responsive records, the request could not prudently be completed without redaction or segregation. See G. L. c. 66, § 10(d)(iv). To the extent the responsive records contain the exempt information as described above, the Department may assess a charge for the segregation and redaction of such exempt material.

Further, this office encourages Ms. Redden and the Department to continue to communicate to facilitate providing records more efficiently and affordably. See G. L. c. 66, § 10(b)(vii) (an agency shall suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency to produce records sought more efficiently and affordably). Any fee estimate by the Department must be in compliance with this determination, the Public Records Law, and its Access Regulations.

Please note, Ms. Redden has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, § 10(d)(iv)(4), 10A(c).

Attorney Doyle
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Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive, flowing style.

Rebecca S. Murray
Supervisor of Records

cc: Molly Redden